

Supreme Court of the United States

OCTOBER TERM, 1964

No. 232

0

UNITED STATES, APPELLANT,

vs.

BOSTON AND MAINE RAILROAD, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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[fol. a]

1

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CRIMINAL DOCKET

63-252-S

THE UNITED STATES

vs.

**BOSTON & MAINE RAILROAD;
PATRICK B. MCGINNIS;
GEORGE A. GLACY;
DANIEL A. BENSON;
INTERNATIONAL RAILWAY EQUIPMENT CORP.;
and
HENRY MERSEY;**

Attorneys

For U. S.:

**US Atty. Stephen Moulton
US Atty. Murray Falk**

For Defendant:

**Lawrence R. Cohen
31 Milk St., Boston Cap. 4500
for deft. Patrick McGinnis**

ANTI-TRUST

**Vio. 15 U.S.C. 20
18 U.S.C. 560**

**Edward B. Hanify (B&M RR)
50 Federal St.
Boston, Mass.**

**Lawrence R. Cohen (McGinnis)
209 Washington St.
Boston, Mass.**

**Edward O. Proctor (Glacy)
294 Washington St.
Boston, Mass.**

Claude B. Cross (Benson)
73 Tremont St.
Boston, Mass.

Jackson J. Holtz (Mersey: Inter. Rail. Equip. Corp.)
19 Milk St.
Boston, Mass.

DOCKET ENTRIES.

1963

- Aug. 13—Indictment returned to Court by Grand Jury.
Order for impounding documents entered.
- 14—Appear. of Atty. Lawrence R. Cohen for Deft Patrick McGinnis—filed.
- 14—Appear. of Atty. William T. Griffin for Deft Patrick McGinnis—filed (44 Wall St., N.Y.C.).
- 20—Appear. of Atty. Jackson Holtz and Cornelius J. Sullivan—filed —Mersey & Internatl.
Appear of Atty. Edw. Hanify and Noel Holland for B&MRR—filed.
Appear. of Atty. Claude B. Cross and John M. Reed for Deft Benson—filed.
Appear. of Atty. Chas. W. Bartlett and Edward O. Proctor for deft Glacy—filed.
(Withdrawn)/
- 29—Appear. of Atty. George C. Caner—filed (for B&MRR).
- [fol. b] Aug. 20—SWEENEY, CH.J. defts. arraigned.
Boston & Maine—Atty. Edw. Hanify enters plea of not guilty in behalf of Corp. Court allows Atty. Hanify until Mon. Aug. 26 at 12 noon to file power of atty.
Patrick B. McGinnis—enters plea of not guilty—bail 1000 without surety.
George F. Glacy—enters plea of not guilty—bail 1000 without surety
George F. Glacy—enters plea of not guilty—bail 1000 without surety.
Daniel A. Benson—enters plea of not guilty—bail 1000 without surety.
Henry Mersey—enters plea of not guilty—bail 1000 without surety.

1963

Aug. 20—International Railway Equipment Corp.—
POWER OF ATTY. filed—Henry Mersey,
Pres. of Corp. enters plea of not guilty in
behalf of corp.

Court permits all defts. to travel according to
business requirements.

All defts. allowed to file special pleas by Sep-
tember 16, 1963.

26—Atty. Edward Hanify filed Power of Atty., as
ordered by Court, at 9:51 AM.

29—Boston & Maine motion for Bill of Particulars
—filed.

Sept. 13—Motion of deft. Boston and Maine Rd. to dis-
miss the indictment filed.

16—Withdrawal of appearance of Charles W. Bart-
lett for deft. *George A. Glacy* filed.

16—Motion of deft. Patrick B. McGinnis to dismiss
indictment filed.

16—Motion of deft. Patrick B. McGinnis for bill of
particulars filed.

16—Motion of deft. Patrick B. McGinnis to strike
parts of indictment (F.R. CR.P. Rule 7D) filed.

16—Motion of deft. Patrick B. McGinnis for a
separate trial filed.

16—Motion of deft. Patrick B. McGinnis to raise
defense under Rule 12(b)(1) filed.

16—Motion by deft. Daniel A. Benson to dismiss
indictment filed.

16—Motion by deft. Daniel A. Benson for bill of
particulars filed.

16—Motion by deft. Daniel A. Benson for severance
of trial filed.

16—Motion by deft. Daniel A. Benson to strike
Parts of the indictment filed.

16—Motion by deft. Daniel A. Benson to raise de-
fense under Rule 12(b)(1) filed.

16—Motion of deft. George F. Glacy to dismiss in-
dictment filed.

1963

- Sept. 16—Motion of deft. George F. Glacy to strike immaterial and prejudicial matter from the indictment filed.
- 16—Motion of defts. George F. Glacy for a bill of particulars filed.
- 16—Motion of deft. George F. Glacy for a separate trial filed.
- 16—Motion of deft. George F. Glacy to raise defense under Rule 12(b)(1) filed.
- 16—Motion of defts. International Railway Equipment Corp'n. and Henry Mersey for bill of particulars filed.
- 16—Motion of defts. International Railway Equipment Corp'n and Henry Mersey to strike certain portions of the indictment filed.
- 16—Motion of defts. International Railway Equipment Corp'n and Henry Mersey to inspect and copy documents (Rule 16) and for production of documentary evidence prior to trial (Rule 17c) filed.
- 16—Motion of defts. International Railway Equipment Corporation and Henry Mersey for severance filed.
- 16—Motion of defts. International Railway equipment Corp'n. and Henry Mersey to dismiss Count II filed.
- Oct. 4—Joint Memorandum of Defts Other the Boston and Maine RR in support of Motion for Severance filed.
- SWEENEY, CH. J.
- 8—Memorandum—entered—All of the motions to dismiss the indictment and for severance and separate trials are denied.
- The Motion of the defendants International Railway Equipment Corporation and Henry Mersey to inspect and copy documents was withdrawn in open court.

1963

[fol. c] Oct. 8—The Motion of the defendant Boston & Maine Railroad for a Bill of Particulars is allowed in full:

The Motion of the defendant George F. Glacy for a Bill of Particulars is allowed as to Paragraph 4 of the indictment. It is denied as to Paragraphs 5 and 11.

The Motion of the defendant Daniel A. Benson for a Bill of Particulars is allowed as to items numbered 1, 2, 3, and denied as to all others.

The Motion of the defendants International Railway Equipment Corporation and Henry Mersey for a Bill of Particulars is denied in full.

All of the Motions to Strike are denied. Any matters complained of because of their possible inflammatory effect on the jurors need not be drawn to the attention of the jury as it is not customary to read indictments to the jury, and they would be read only upon the insistence of the defendants." Copies to B&M; Glacy; Benson; Railway Equip. Corp.; Mersey; International Railway Equip. Corp.

Oct. 25—Stenographic record of the proceedings on August 20, 1963 filed.

Nov. 7—Bill of particulars of the Pltff. filed. c/s

4—Stenographic Record of the proceedings on October 7, 1963 filed.

14—Motion of Deft. George F. Glacy to dismiss Count 1 of the Indictment filed. c/s

15—Motion of Deft. Patrick B. McGinnis for reconsideration of his Motion to dismiss counts one and two of the Indictment. filed. c/s

15—Motion of Deft. Daniel A. Benson to dismiss Count 1 of the Indictment as defined by the Bill of Particulars, filed. c/s

19—Motion of deft. Boston and Maine Railroad for Judgment of acquittal or, alternatively, to dismiss. filed. c/s

1963

Nov. 19—SWEENEY, CH. J. SUPPLEMENTAL MEMORANDUM entered. . . Re: Deft. Patrick B. McGinnis for a Bill of Particulars m m motion of the Deft. is allowed as to paragraph 1 of the motion with reference to subparagraphs (b), (c), (e) and (f); the balance of the motion is denied. When all the particulars ordered have been furnished, the court will hear defendants' motions to raise a defense under Rule 12(b)(1). Copy to Lawrence R. Cohen, Esq. U.S. Asst. Atty. Moulton and Falk.

26—Brief in support of motion of Deft. George F. Glacy to dismiss count 1 of the indictment filed.

29—Motion of Defts. International Railway Equipment Corp. and Henry Mersey for reconsideration of their motion for a bill of particulars filed. c/s

29—Motion of Defts. International Railway Equipment Corp. and Henry Mersey, for reconsideration of their motion to dismiss Count II filed. c/s

29—Motion of Defts. International Railway Equipment Corp. and Henry Mersey, for reconsideration of their motion for severance filed. c/s

Dec. 2—Government's memorandum in opposition to Defts. motions to dismiss filed.

[fol. d] Dec. 3—SWEENEY, CH. J. Deft. George F. Glacy motion to dismiss Count 1 of the Indictment.

DISMISSED as per Memorandum, entered.

3—SWEENEY, CH. J. Deft. Patrick B. McGinnis motion for reconsideration of his motion to dismiss Counts one and two of the indictment ALLOWED as to Count 1—See Memo.

DENIED as to Count II. entered.

3—SWEENEY, CH. J. Deft. Boston and Maine Railroad's motion for Judgment of Acquittal or, alternatively, to dismiss DENIED as to "Acquittal", ALLOWED as to "Dismissal". See Memo. (Count 1 only).

1963

- Dec. 3—SWEENEY, CH. J. Defts. International Railway Equip. Corp. and Henry Mersey motion for reconsideration of their motion to dismiss Count II DENIED. entered.
- 3—SWEENEY, CH. J. Defts. International Railway Equip. Corp. and Henry Mersey motion for reconsideration of their motion for severance DENIED TOTALLY. entered.
- 3—SWEENEY, CH. J. Defts. International Railway Equip. Corp. and Henry Mersey for reconsideration of their motion for a Bill of Particulars DENIED. entered.
- 3—SWEENEY, CH. J. Deft. Daniel A. Benson motion to dismiss Count 1 of the Indictment as defined by the Bill of Particulars DISMISSED as per Memorandum.
- 3—SWEENEY, CH. J. MEMORANDUM filed. Copies to Edward O. Proctor; Claude B. Cross; Lawrence R. Cohen; George C. Caner; Edward Myers.

1964

- Jan. 2—Pltf's Notice of Appeal filed. c/s (To the Supreme Court)
- Feb. 4—Stenographix record of Hearing on Dec. 3, 1963, filed.

[fol. e]

[Clerk's Certificate to foregoing
paper omitted in printing]

[fol. 1]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INDICTMENT

CRIMINAL No. 15 U.S.C. 20, 18 U.S.C. 2, 660

UNITED STATES OF AMERICA

v.

BOSTON AND MAINE RAILROAD; PATRICK B. MCGINNIS;
GEORGE F. GLACY; DANIEL A. BENSON; INTERNATIONAL
RAILWAY EQUIPMENT CORPORATION; AND HENRY
MERSEY, DEFENDANTS

INDICTMENT—filed August 13, 1963

The grand jury charges:

COUNT ONE

I. DEFENDANTS

1. The Boston and Maine Railroad (hereinafter referred to as "B&M"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts and the States of Maine, New Hampshire, and New York, with its principal place of business at 150 Causeway Street, Boston, Massachusetts, is hereby indicted and made a defendant herein. B&M is a common carrier by railroad engaging in the transportation of passengers and property, in and between the States of Maine, New Hampshire, Vermont, Massachusetts and New York.

2. The individuals named below are hereby indicted and made defendants herein. Within the period of time covered by this indictment each of the said defendants held the position with defendant B&M indicated below:

Name of Individual Defendant	Address	Position held with Defendant B&M
Patrick B. McGinnis	Staten Island, New York, New York	President and Director
George F. Glacy	Brookline, Massachusetts	Vice President
Daniel A. Benson	Weston, Massachusetts	Vice President

[fol. 2]

II. NATURE OF TRADE AND COMMERCE

3. B&M is a rail common carrier which transports passengers and freight in and between the States of Maine, Massachusetts, New Hampshire, Vermont and New York. It connects with and interchange freight with other rail carriers and with water carriers and/or motor carriers operating in and between the aforesaid states and other states and foreign nations. B&M operates approximately 30 percent of the class I rail mileage among New England railroads. In 1958 and in each subsequent year B&M carried passengers in excess of 2,000,000 passenger miles and in excess of 15,000,000 tons of freight. In the same period it has had annual operating revenues of \$60,000,000 or more, but has suffered a decline in revenues and has incurred a net loss near or in excess of \$3,000,000 annually in each year of said period.

III. OFFENSE CHARGED

4. On August 14, 1958, defendant B&M violated Section 10 of the Clayton Act, 15 U.S.C. 20, by having dealings in certain articles of commerce amounting to more than \$50,000 with another corporation when the said defendant B&M had upon its board of directors and as its president a person, and had as its selling officer and as its agent in the particular transaction a person, who at the same time had a substantial interest in such other corporation, which dealings were not with a bidder whose bid was the most favorable to the said defendant B&M, in that no competitive bidding under regulations prescribed by the Interstate Commerce Commission was conducted with

respect to said dealings. The aforesaid dealings consisted of the sale to International Railway Equipment Corporation of eight (8) stainless steel passenger coaches and two (2) stainless steel combination baggage coaches which had theretofore been in operation on the lines of the defendant B&M.

[fol. 3] 5. In the course of the aforesaid dealings defendants McGinnis, Glacy and Benson violated Section 10 of the Clayton Act, 15 U.S.C. 20, in that defendant McGinnis knowingly voted for, and defendants McGinnis, Glacy and Benson knowingly directed the act constituting the violation alleged in paragraph 4 of this indictment and aided and abetted in said violation.

IV. JURISDICTION AND VENUE

6. The aforesaid offenses were carried out within the District of Massachusetts within the five years preceding the return of this indictment.

COUNT TWO

V. DEFENDANTS

7. The allegations contained in paragraph 2 of this indictment are here realleged with the same force and effect as though set forth in full.

8. International Railway Equipment Corporation (hereinafter referred to as "International"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business at 150 Causeway Street, Boston, Massachusetts, is hereby indicted and made a defendant herein. International was incorporated in or about June 1957 as the International Mill and Steel Supply Corporation. In or prior to January 1958, the name was changed to its present style. Between July 1, 1958 and June 30, 1959, International's gross sales amounted to approximately \$480,000, and consisted almost exclusively of the resale of equipment acquired from B&M.

[fol.4] 9. Henry Mersey, whose address is New Haven, Connecticut, is hereby indicted and made a defendant herein. During the period of time covered by this indictment Mersey was President of International.

VI. NATURE OF TRADE AND COMMERCE

10. The allegations contained in paragraph 3 of this indictment are here realleged with the same force and effect as though set forth in full.

VII. OFFENSE CHARGED

11. Between August 14, 1958 and December 16, 1958, the defendants McGinnis, Glacy, and Benson, having by virtue of their official relation to and position with the B&M powers of control, direction, supervision, and management over the moneys, funds, credits, securities, property and assets of the said B&M arising or accruing from or used in the aforesaid commerce, did, by arranging, permitting, authorizing, directing and carrying out a transaction pursuant to which eight (8) stainless steel passenger coaches and two (2) stainless steel combination baggage coaches were sold to International for \$250,000, willfully misapply, and willfully permit to be misapplied moneys, funds, credits, securities, property and assets of the said B&M arising or accruing from or used in the aforesaid commerce; and did willfully convert to their own use moneys, funds, credits, securities, properties and assets of the said B&M to wit, \$71,500; in violation of Section 660, Title 18, U.S. Code.

12. The aforesaid violations were effectuated by the said defendants in the manner hereinafter described. On or about April 30, 1958, one Waldo E. Bugbee, a dealer in used railroad equipment, called on defendant Glacy for the purpose of obtaining an option to purchase a certain 10 coaches then in service on B&M lines, for resale [fol. 5] to an undisclosed third party. Bugbee suggested a purchase price under the option of approximately \$500,000. Defendant Glacy refused to grant the option. Thereafter, Bugbee was called on the telephone by Henry Mersey. Mersey was a stranger to Bugbee. Mersey informed Bugbee that he, Mersey, had the right to offer the said B&M coaches for sale. Thereafter, Mersey did offer them for sale to Bugbee's intended customer, the Wabash Railroad. In May 1958 defendants McGinnis and Glacy instructed subordinates at the B&M that no direct dealings were to be had with Bugbee and that

Mersey was to handle the sale of the said 10 coaches. At no time did Mersey purport to act as an agent or broker for the B&M but negotiated for the sale of the said 10 B&M coaches on his own account. In late July 1958, knowing that the Wabash Railroad was interested in said 10 coaches, defendants Benson and Glacy recommended to B&M's Board of Directors that the said 10 coaches be withdrawn from service and sold. Defendant McGinnis voted to approve the sale and each of the said defendants directed that the coaches be transferred to International at a price of \$250,000. No competitive bidding was held. On August 14, 1958, title to the said 10 coaches was conveyed by a bill of sale executed by defendant Glacy on behalf of the B&M, the price of \$250,000 having been paid by a check post-dated August 22, 1958. On August 15, 1958, International re-sold the said 10 coaches to a Wabash subsidiary at a price of \$425,000.

13. At or about and shortly after the delivery of the said 10 coaches to International, moneys were delivered by International to defendants McGinnis, Glacy and Benson as follows:

[fol. 6]

August 13, 1958	—	Benson	—	\$ 5,000
August 22, 1958	—	Glacy	—	\$12,500
August 29, 1958	—	Glacy	—	\$12,500
October 9, 1958	—	Benson	—	\$ 1,500
October 10, 1958	—	McGinnis	—	\$20,000
December 3, 1958	—	McGinnis	—	\$15,000
December 16, 1958	—	Benson	—	\$ 5,000

The foregoing sums were derived almost entirely out of the proceeds from the resale by International of the said 10 coaches. Upon the delivery of the aforesaid sums to defendants McGinnis, Glacy and Benson, the said defendants withheld the said moneys from the B&M, and retained them exclusively for their own account and use.

14. Between August 14, 1958 and December 16, 1958, defendants International and Mersey did aid and abet defendants McGinnis, Glacy, and Benson so to willfully and knowingly misapply and permit to be misapplied moneys, funds, credits, securities, property and assets

of the B&M as aforesaid, and to convert to the use of defendants McGinnis, Glacy, and Benson, moneys, funds, credits, securities, property and assets of the said B&M as set forth in paragraph 13 of this indictment (Title 18, U.S. Code, Sections 2 and 660).

VIII. JURISDICTION AND VENUE

15. The aforesaid offenses were carried out within the District of Massachusetts within the five years preceding the return of this indictment.

[fol. 7] A TRUE BILL.

/s/ William H. Orrick, Jr.
Assistant Attorney General
Department of Justice

/s/ Joseph J. Saunders
Attorney, Department of Justice

/s/ John H. Dougherty
Attorney, Department of Justice

/s/ Jack Pearce
Attorney, Department of Justice

/s/ Rueben F. Boynton
Foreman of the Grand Jury.

/s/ Stephen Moulton
Assistant United States Attorney.

[fol. 8]

DISTRICT OF MASSACHUSETTS

August 13, 1963 3:45 P.M.

Returned into the District Court by the Grand Jurors and
filed

/s/ Frances R. Foley
Deputy Clerk.

[fol. 9]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

MOTION OF DEFENDANT BOSTON AND MAINE RAILROAD
FOR BILL OF PARTICULARS—filed August 29, 1963

The Boston and Maine Railroad, defendant in the above-entitled proceeding, moves that the Court direct the United States of America to file a Bill of Particulars to Count ONE of the Indictment specifying as follows:

1. Whether the "person" alleged in paragraph III of Count ONE as having been the "selling officer and agent" of the defendant B&M in the transaction in question is the same "person" referred to in the previous clause of said paragraph as being on the board of directors and the president of the B&M.

2. If the answer to Particular No. 1 is negative, the name of the said "person".

3. With respect to the allegation of paragraph III of Count ONE to the effect that the defendant B&M had "upon its board . . . and as its selling officer . . . a person, who at the same time had a substantial interest in such other corporation" . . .

[fol. 10] (a) Whether "such other corporation" is International Railway Equipment Corporation,

(b) If the answer to 3(a) is negative, the same of "such other corporation",

(c) The nature and extent of the interest or interests of the said person or persons in "such other corporation".

BOSTON AND MAINE RAILROAD

By /s/ Edward B. Hanify
Ropes & Gray
Attorneys

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 11]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

MOTION OF THE DEFENDANT, PATRICK B. MCGINNIS, FOR
BILL OF PARTICULARS—September 16, 1963

The defendant Patrick B. McGinnis moves that the Court direct the United States of America to file a Bill of Particulars to the indictment specifying as follows:

As to Count One:

1. With respect to paragraph 4 thereof, please specify:

(a) The articles of commerce with which the defendant, B&M, had dealings, if other than the ten coaches referred to in paragraph 4 and later in the indictment.

(b) The name of the "person" who acted as the selling officer and the name of the "person" who acted as the agent for B&M in the transaction described.

(c) The "substantial interest" which the defendant, Patrick B. McGinnis, is alleged to have had in International Railway Equipment Corporation (hereinafter referred to as "International").

(d) When is the defendant, McGinnis, alleged to have acquired his substantial interest in International.

(e) The "substantial interest" which the selling officer [fol. 12] is alleged to have had in International and when it is alleged to have been acquired by him.

(f) The "substantial interest" which the said agent is alleged to have had in International and when the same is alleged to have been acquired.

2. With respect to paragraph 5 thereof, specify or state:

(a) The date upon which the defendant McGinnis knowingly voted for the acts described in paragraph 4 of the indictment.

(b) Whether or not the defendant, McGinnis, is charged with knowing that the defendants Glacy and Ben-

son or Glacy or Benson had a substantial interest in International.

(c) Specify the substantial interest which McGinnis is alleged to have known that Benson and Glacey or either of them is alleged to have had in said International.

(d) Specify the "act" that McGinnis is alleged to have directed and the person or persons to whom, and the date or dates when, such direction was given.

As to Count Two:

3. With respect to paragraph 11 thereof:

(a) Specify in detail the acts performed by the defendant McGinnis in "arranging, permitting, authorizing, directing and carrying out" the transaction pursuant to which the coaches were sold to International. In complying with this specification, it is requested that the Government be ordered to give all dates, amounts and names wherever possible.

(b) Specify what monies, funds, credits, securities, property and assets of the B&M were willfully misapplied by the defendant McGinnis.

(c) Specify what monies, funds, credits, securities, [fol. 13] property, and assets of the B&M the defendant McGinnis willfully permitted to be misapplied.

(d) The names of all persons whom the defendant McGinnis willfully permitted to misapply assets of the B&M.

(e) What assets and property of the B&M were willfully misapplied by the defendant McGinnis.

(f) Each and every date on which the defendant McGinnis is alleged to have willfully misapplied or to have permitted the misapplication of money or property of the B&M.

(g) Give the date and amount or description of any monies and properties of the B&M which the defendant McGinnis is alleged to have converted to his own use.

4. With respect to paragraph 12 thereof:

(a) Specify the name of each and every subordinate to whom the defendant McGinnis is alleged to have given instructions not to deal with Bugbee or whom he is alleged to have instructed that Mersey was to handle the sale

of the coaches, and give the date or dates when such instructions were given.

(b) Specify the name of each and every person whom the defendant McGinnis is alleged to have "directed" that the coaches be transferred to International, and give the date or dates when such directions were allegedly given.

(c) Give the precise name of the Wabash subsidiary to which the coaches are alleged to have been resold and state the substantial terms of such resale including the time and manner of payments of the said \$425,000 price.

5. With respect to paragraph 13 thereof:

[fol. 14] (a) State what portion, if any, of the \$35,000 alleged to have been paid to McGinnis by International was derived from the proceeds of the resale by International.

(b) If not all of the \$35,000 was derived from the resale by International, describe the source of those payments to McGinnis which were not derived from said resale.

6. With respect to paragraph 14 thereof: Specify in complete detail the manner in which International and Mersey allegedly aided and abetted the other individual defendants in carrying out the acts with which they are charged.

PATRICK B. MCGINNIS

By his Attorneys,

/s/ Lawrence R. Cohen

/s/ William T. Griffin
209 Washington Street
Boston 8, Massachusetts
Capitol 7-4500

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 15]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

MOTION OF DEFENDANT GEORGE F. GLACY FOR A BILL
OF PARTICULARS—filed September 16, 1963

The defendant George F. Glacy, without waiving his motion to dismiss, but expressly relying on the same, moves that the Court direct the United States of America to file a Bill of Particulars to the Indictment as follows:

In Count One

In Paragraph 4:

1. Identify the person referred to as "its selling officer" (lines 5 and 6).

2. Identify the person referred to as "its agent in the particular transaction" (lines 6 and 7).

3. Identify the person or persons alleged to have had "a substantial interest in such other corporation" (lines 5-8).

4. Identify "such other corporation" (line 8).

5. Specify as to each person the nature and extent of his interest or interests in such other corporation (lines 7, 8).

In Paragraph 5:

6. With respect to the allegation that the defendant Glacy "directed the act constituting the violation alleged in paragraph 4" specify the acts of Glacy constituting [fol. 16] such direction, including the date or dates (as accurately as possible) and the person or persons to whom and the manner in which such directions were given (lines 4-6).

7. With respect to the allegation that the defendant Glacy "aided and abetted in said violation" specify the acts of Glacy constituting such aiding and abetting, including the date or dates (as accurately as possible) (lines 6, 7).

In Count Two

In Paragraph 11:

8. Specify the moneys, funds, credits, securities, property or assets of the Boston and Maine Railroad alleged to have been misapplied or permitted to be misapplied (lines 12-14).

GEORGE F. GLACY

By his Attorneys,

ELY, BARTLETT, BROWN & PROCTOR

/s/ Edward O. Proctor

/s/ Edward O. Proctor, Jr.
294 Washington St., Boston
HU. 2-2310

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 17]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

MOTION BY DEFENDANT DANIEL A. BENSON FOR BILL OF
PARTICULARS—filed September 16, 1963

Without waiving his motion to dismiss the indictment, defendant Daniel A. Benson moves that the Court direct the United States of America to file a bill of particulars to the indictment as follows:

1. Identifying the person who, according to paragraph 4 of the indictment, Boston and Maine Railroad had "as its selling officer and as its agent in the particular transaction."

2. Naming the "other corporation" referred to in paragraph 4 of the indictment.

3. Specifying the nature and extent of the "substantial interest" in such other corporation referred to in paragraph 4 of the indictment.

4. Specifying the manner in which defendant Benson is alleged by paragraph 5 of the indictment to have "directed the act."

5. Giving the date or dates on which defendant Benson is alleged by paragraph 5 of the indictment to have "directed the act."

6. Specifying the acts of defendant Benson by which he is alleged by paragraph 5 of the indictment to have "aided and abetted in said violation."

7. Giving the date or dates on which defendant Benson is alleged to have "aided and abetted in said violation."

8. Specifying the moneys, funds, credits, securities, property or assets of Boston and Maine Railroad which are alleged to have been misapplied by defendant Benson according to paragraph 11 of the indictment.

[fol. 18] 9. Specifying the moneys, funds, credits, securities, property and assets of Boston and Maine Railroad which are alleged to have been converted by defendant Benson according to paragraph 11 of the indictment.

10. Naming the "subordinates" who are alleged by paragraph 12 of the indictment to have been instructed by defendants McGinnis and Glacy that no direct dealings were to be had with Bugbee and that Mersey was to handle the sale of the 10 coaches.

11. Naming the "Wabash subsidiary" to whom International resold the 10 coaches according to paragraph 12 of the indictment.

12. Specifying what part of the sums alleged by paragraph 13 of the indictment to have been received by each of the defendants was derived of the proceeds of the resale by International.

By his attorneys,

WITHINGTON, CROSS, PARK & McCANN

/s/ Claude B. Cross

/s/ John M. Reed
73 Tremont Street
Boston, Massachusetts
Telephone: CA7-0185

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 19]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal Action No. 63-252-S

UNITED STATES OF AMERICA

vs.

BOSTON AND MAINE RAILROAD ET ALS

MEMORANDUM—entered—October 8, 1963

SWEENEY, Ch. J. All of the motions to dismiss the indictment and for severance and separate trials are denied.

The Motion of the defendants International Railway Equipment Corporation and Henry Mersey to inspect and copy documents was withdrawn in open court.

The Motion of the defendant Boston & Maine Railroad for a Bill of Particulars is allowed in full.

The Motion of the defendant George F. Glacy for a Bill of Particulars is allowed as to Paragraph 4 of the indictment. It is denied as to Paragraphs 5 and 11.

The Motion of the defendant Daniel A. Benson for a Bill of Particulars is allowed as to items numbered 1, 2, 3, and denied as to all others.

The Motion of the defendants International Railway Equipment Corporation and Henry Mersey for a Bill of Particulars is denied in full.

All of the Motions to Strike are denied. Any matters complained of because of their possible inflammatory effect on the jurors need not be drawn to the attention of the jury as it is not customary to read indictments to the jury, and they would be read only upon the insistence of the defendants.

[fol. 20]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal Action No. 63-252-S

UNITED STATES OF AMERICA

v.

BOSTON AND MAINE RAILROAD, ET AL

SUPPLEMENTAL MEMORANDUM—entered—
November 19, 1963

SWEENEY, CH. J. Through inadvertence, the court's Memorandum of October '8, 1963, did not pass upon the motion of the defendant Patrick B. McGinnis for a Bill of Particulars. It is the intention of the court to allow the McGinnis motion to the same extent and no more than was allowed in the companion cases.

Accordingly, the motion of the defendant McGinnis for a Bill of Particulars is allowed as to paragraph 1 of the motion with particular reference to subparagraphs (b), (c), (e) and (f); the balance of the motion is denied.

When all of the particulars ordered have been furnished, the court will hear defendants' motions to raise a defense under Rule 12(b) (1).

[fol. 21]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

BILL OF PARTICULARS—filed November 7, 1963

Now comes the United States of America, by John H. Dougherty and Jonathan Rose, Attorneys, Department of Justice, and Stephen Moulton, Assistant United States Attorney, Boston, Massachusetts, and, in compliance with the order of this Court entered October 8, 1963, files herewith its bill of particulars concerning the indictment in this cause, and, in this connection, says:

1. With respect to: The motion of defendant Boston & Maine Railroad (except paragraph 3(c) thereof); the motion of defendant Glacy as to paragraph 4 of the indictment (except paragraph 5 of said motion); and the motion of defendant Benson (except paragraph 3 of said motion)—

(a) Defendant Glacy is the person who is referred to in paragraph 4 of the indictment as the person whom defendant B&M “had as its selling officer and as its agent in the particular transaction.”

[fol. 22] (b) The corporation which is referred to in paragraph 4 of the indictment as “another corporation” and as “such other corporation” is defendant International Railway Equipment Corporation.

2. With respect to: Paragraph 3(c) of the motion of defendant Boston & Maine Railroad; paragraph 5 of the motion of defendant Glacy; and paragraph 3 of the motion of defendant Benson—

The substantial interest of defendants McGinnis and and Glacy in defendant International consisted of an un-

derstanding, agreement, relationship, arrangement and concert of action among the said defendants McGinnis, Glacy, and International, and others, for, among other things, the purpose of producing profits for International from dealings by it in property acquired from the B&M through the intervention, direction or assistance of defendants McGinnis, Glacy, and Benson, and pursuant to which defendants McGinnis, Glacy, and Benson were to and did receive substantial monies.

Respectfully submitted,

/s/ John H. Dougherty
Attorney, Department of Justice

/s/ Jonathan Rose
Attorney, Department of Justice

/s/ Stephen Moulton
Assistant United States Attorney

[fol. 23]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

MOTION OF DEFENDANT GEORGE F. GLACY TO DISMISS
COUNT 1 OF THE INDICTMENT—filed November 14, 1963

Now comes the defendant George F. Glacy, after the filing by the Government of its bill of particulars, and moves that Count 1 of the indictment be dismissed on the ground that said indictment as now defined by the bill of particulars does not state an offense; more particularly in that the relationship described in particular number

2 does not as matter of law constitute a substantial interest of the defendants McGinnis and Glacy in defendant International Railway Equipment Corporation within the meaning of Section 10 of the Clayton Act, 15 U.S.C. 20.

By his Attorneys,

ELY, BARTLETT, BROWN & PROCTOR

/s/ Edward O. Proctor

294 Washington St., Boston

[HU. 2-2310]

CERTIFICATE OF SERVICE

[omitted in printing]

[fol. 24]

IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

MOTION OF DEFENDANT DANIEL A. BENSON TO DISMISS
COUNT 1 OF THE INDICTMENT AS DEFINED BY THE BILL
OF PARTICULARS—filed November 15, 1963

Defendant Daniel A. Benson, after the filing of a bill of particulars, now moves that Count 1 of the indictment be dismissed on the ground that said indictment as now defined by the bill of particulars does not state facts sufficient to constitute an offense by defendant Benson against the United States.

By his Attorneys,

WITHINGTON, CROSS, PARK & MCCANN

/s/ Claude B. Cross

/s/ John M. Reed

[fol. 25]

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 26]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

Allowed as to Count 1—see memo denied as to Count II
s/ G. C. Sweeney 12-3-63

MOTION OF DEFENDANT, PATRICK B. MCGINNIS, FOR
RECONSIDERATION OF HIS MOTION TO DISMISS COUNTS
ONE AND TWO OF THE INDICTMENT—filed
November 15, 1963

Now comes the defendant, Patrick B. McGinnis, after the filing by the Government of its Bill of Particulars, and moves that this Honorable Court reconsider his motion to dismiss the indictment filed on September 16, 1963, and denied by this Court on October 8, 1963.

In support of this motion, this defendant says:

As to Count One:

1. That on November 5, 1963, the Government filed a Bill of Particulars concerning the indictment in this cause which defined the alleged "substantial interest" of the defendants McGinnis and Glacy in International Railway Equipment Corporation as consisting of:

"... an understanding, agreement, relationship, arrangement and concert of action among the said defendants McGinnis, Glacy, and International and others, for, among other things, the purpose of *producing profits for International from dealings by it in property acquired from the B & M through the intervention, direction or assistance of defendants* [fol. 27] McGinnis, Glacy, and Benson, and pursuant to which defendants McGinnis, Glacy, and Benson *were to and did receive substantial monies.*" (Emphasis ours.)

2. The Bill of Particulars thus attempt to enlarge the indictment by alleging a concert of action among certain of the defendants.

3. The "substantial interest" as described by the Bill of Particulars does not as a matter of law constitute a substantial interest of the defendants McGinnis and Glacy in the defendant International within the meaning of Section 10 of the Clayton Act.

As to Count Two:

1. Paragraphs 11 and 13 of the indictment allege, in effect, that the defendants McGinnis, Glacy, and Benson converted to their own use and withheld from the B&M a total of \$71,500 which belonged to the B&M.

2. The Bill of Particulars specifies that the acts of McGinnis and Glacy produced profits *for International* arising out of property acquired by International from the B&M. The allegations in the indictment are inconsistent with those in the Bill of Particulars. The latter describes an offense, if any, in which the transfer of title to International is the central act, whereas the offense described in the indictment arises entirely from the withholding of funds belonging to the B&M.

By his Attorneys,

/s/ Lawrence R. Cohen

/s/ William T. Griffin
209 Washington Street
Boston 8, Massachusetts
CApitol 7-4500

[fol. 28]

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 29]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

Denied as to "acquittal" allowed as to "dismissal"
(See memo) s/ G. C. Sweeney 12-3-63

MOTION OF DEFENDANT BOSTON AND MAINE RAILROAD
FOR JUDGEMENT OF ACQUITTAL OR, ALTERNATIVELY, TO
DISMISS—filed November 19, 1963

Boston and Maine Railroad moves for entry of a judgment of acquittal as to it in the above captioned Indictment on the ground that the Bill of Particulars filed November 7, 1963, especially paragraph 2 thereof, shows that the evidence to be introduced by the government in support of the Indictment will be insufficient to sustain a conviction of the defendant Railroad for the offense charged in the Indictment. Alternatively, if an acquittal is denied, Boston and Maine Railroad moves for dismissal of the action as to it on the aforesaid ground.

BOSTON AND MAINE RAILROAD

/s/ Edward B. Hanify

/s/ George C. Caner, Jr.
Ropes & Gray
Its Attorneys

[fol. 30]

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 31]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal Action No. 63-252-S

UNITED STATES OF AMERICA, PLAINTIFF

v.

BOSTON AND MAINE RAILROAD, ET AL, DEFENDANTS

MEMORANDUM—entered—December 3, 1963

SWEENEY, CH. J. There are before me motions of the defendants Boston and Maine Railroad, Daniel A. Benson, Patrick B. McGinnis and George F. Glacy to dismiss Count I of the indictment in the above case in the light of a Bill of Particulars filed by the government. In this Count of the indictment the defendants are charged with violation of Section 10 of the Clayton Act (15 U.S.C. 20) which provides "No common carrier engaged in commerce shall have any dealings in securities, supplies, or other articles of commerce, . . . with another corporation, firm, partnership, or association when the said common carrier shall have upon its board of directors or as its president, manager, or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership, or association; . . ." except by competitive bidding.

The government concedes that there are no interlocking directors, and it bases its case upon the allegation that the named individual defendants had a "substantial interest" in the defendant International. The Bill of Particulars discloses that the "substantial interest" in this case consists of "an understanding, agreement, relationship, arrangement and concert of action among the said defendants McGinnis, Glacy, and International, and others, for, among other things, the purpose of producing profits for International from dealings by it in property acquired from the B & M through the intervention, di-

rection or assistance of defendants McGinnis, Glacy, and Benson, and pursuant to which defendants McGinnis, Glacy, and Benson were to and did deceive substantial monies."

The motions to dismiss Count I of the indictment are allowed on the basis of my construction of the statute. I rule as a matter of law that the words "any substantial interest" as used in the statute do not cover a situation such as here presented. The statute is limited to one who has a then present legal interest in the buying corporation and does not include one whose only interest is in the outcome of what may have been an illegal and illicit plan to siphon off for his personal benefit property of the Boston and Maine Railroad through the medium of International.

[fol. 33]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—filed January 2, 1964.

I. Notice is hereby given that the United States of America appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Massachusetts, entered December 3, 1963, dismissing Count One of an indictment charging the defendants Boston and Maine Railroad, Patrick B. McGinnis, George F. Glacy, and Daniel A. Benson, with violation of Section 10 of the Clayton Act, c. 323, § 10, 38 Stat. 734, 15 U.S.C. 20. This appeal is taken pursuant to Title 18, United States Code, Section 3731.

II. The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the

Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries.
2. Indictment filed August 13, 1963.
3. Motions for bill of particulars filed by defendants:
 - (a) Boston and Maine Railroad, August 29, 1963;
 - (b) Patrick B. McGinnis, September 16, 1963;
 - (c) George F. Glacy, September 16, 1963;
 - (d) Daniel A. Benson, September 16, 1963.
4. Orders requiring United States of America to file a bill of Particulars:
 - (a) entered October 8, 1963;
 - (b) entered November 19, 1963.

[fol. 34.] 5. Bill of particulars filed by United States of America November 7, 1963.

6. Motions to dismiss Count One filed by defendants:
 - (a) Boston and Maine Railroad November 19, 1963;
 - (b) Patrick B. McGinnis November 15, 1963;
 - (c) George F. Glacy November 14, 1963;
 - (d) Daniel A. Benson November 15, 1963.
7. Decision dismissing Count One of indictment dated December 3, 1963 and entered December 3, 1963.
8. This Notice of Appeal to the Supreme Court of the United States.

III. The following questions are presented by this appeal:

1. The indictment alleges that the defendants, the Boston & Maine Railroad, its president and director, and two of its vice-presidents, one of whom acted as selling agent, sold, without competitive bidding, railroad property worth in excess of \$50,000 to International Railway Equipment Corporation, a corporation in which the individual defendants had a substantial interest, in violation of Section 10 of the Clayton Act, c. 323, § 10, 38 Stat. 734, 15 U.S.C. 20. The bill of particulars alleges

that the substantial interest was an "understanding, agreement, relationship, arrangement and concert of action among the said defendants . . . and International, and others, for, among other things, the purpose of producing profits for International from dealings by it in property acquired from the B & M through the intervention, direction or assistance of defendants McGinnis, Glacy, and Benson, and pursuant to which" those defendants [fol. 35] ants received "substantial moneys." The question is whether, as a result of the foregoing "understanding, etc.," the designated officers of the B & M had "any substantial interest" in International.

2. Whether the words "any substantial interest" as used in Section 10 of the Clayton Act, 38 Stat. 734, 15 U.S.C. 20 are limited in their application to a "then present legal interest."

/s/ Robert B. Hummel

/s/ D. Daniel Stewart, Jr.
Attorneys, Department of Justice

/s/ W. Arthur Garrity, Jr.
*United States Attorney,
District of Massachusetts*

[fol. 36]

CERTIFICATE OF SERVICE
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[fol. 37] [Clerk's Certificate to foregoing transcript
omitted in printing]

[fol. 38]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

Allowed George C. Sweeney 2-14-64

MOTION OF THE UNITED STATES FOR ENLARGEMENT OF
THE TIME FOR DOCKETING CASE AND FILING RECORD
AND STATEMENT AS TO JURISDICTION—filed
February 12, 1964

1. The United States of America, by the undersigned, respectfully moves this Court pursuant to Rule 13 of the Rules of the Supreme Court for an enlargement to and including May 1, 1964 of the time for docketing the case in the appeal of the United States herein to the Supreme Court and filing the record thereof with the clerk of the Supreme Court together with the printed statement as to jurisdiction required by paragraph 2 of said Rule 13. Such time presently expires March 2, 1964.

2. In support of said motion the undersigned states that the attorneys handling appellate matters for the United States in the Supreme Court, because of a very heavy calendar of cases pending in the Supreme Court, have not had the time for the study necessary to preparation of the jurisdictional statement, and feel another sixty days will be necessary therefor.

3. Counsel for the defendants have stated to the undersigned that they have no objection to the enlargement of time sought by this motion.

Respectfully submitted,

/s/ John H. Dougherty
Attorney, Department of Justice

[fol. 39]

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 40]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

ORDER OF ENLARGEMENT OF TIME FOR DOCKETING CASE
AND FILING RECORD AND STATEMENT AS TO
JURISDICTION—dated February 14, 1964

On motion of the United States, the defendants consenting, it is ORDERED that the time for docketing said case and filing the record thereof with the Clerk of the Supreme Court of the United States, together with the printed statement as to jurisdiction required by paragraph 2 of Rule 13 of the Rules of the Supreme Court, be enlarged to and including May 1, 1964.

GEORGE C. SWEENEY
United States District Judge

2-14-64

[fol. 41]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

Allowed George C. Sweeney 4-28-64

MOTION OF THE UNITED STATES FOR ENLARGEMENT OF
THE TIME FOR DOCKETING CASE AND FILING RECORD AND
STATEMENTS TO JURISDICTION—filed April 27, 1964

1. The United States of America, by the undersigned, respectfully moves this Court pursuant to Rule 13 of the Rules of the Supreme Court for a further enlargement

to and including June 1, 1964 of the time for docketing the case in the appeal of the United States herein to the Supreme Court and filing the record thereof with the clerk of the Supreme Court together with the printed statement as to jurisdiction required by paragraph 2 of said Rule 13. Such time presently expires May 1, 1964.

2. In support of said motion the undersigned state that the attorneys handling appellate matters for the United States in the Supreme Court, because of a very heavy calendar of cases pending in the Supreme Court, still have not had the time for the study necessary to preparation of the jurisdictional statement, and feel another additional month sought by this motion will be necessary therefor.

3. Counsel for the defendants have stated to the undersigned that they have no objection to the enlargement of time sought by this motion.

Respectfully submitted,

/s/ John H. Dougherty

Attorney, Department of Justice

/s/ Jonathan Rose

Attorney, Department of Justice

/s/ Stephen Moulton

Assistant United States Attorney

[fol. 42]

CERTIFICATE OF SERVICE

[omitted in printing]

[fol. 43]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[File Endorsement Omitted]

ORDER OF ENLARGEMENT OF TIME FOR DOCKETING CASE
AND FILING RECORD AND STATEMENT AS TO
JURISDICTION—dated April 28, 1964

On motion of the United States, the defendants consenting, it is ORDERED that the time for docketing said case and filing the record thereof with the Clerk of the Supreme Court of the United States, together with the printed statement as to jurisdiction required by paragraph 2 of Rule 13 of the Rules of the Supreme Court, be enlarged to and including June 1, 1964.

GEORGE C. SWEENEY
United States District Judge

4-28-64

[fol. 44]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

[File Endorsement Omitted]

NOTICE OF THE UNITED STATES FOR ENLARGEMENT OF
THE TIME FOR DOCKETING CASE AND FILING RECORD AND
STATEMENTS TO JURISDICTION—filed May 28, 1964

1. The United States of America, by the undersigned, respectfully moves this Court pursuant to Rule 13 of the

Rules of the Supreme Court for a further enlargement to and including July 1, 1964 of the time for docketing the case in the appeal of the United States herein to the Supreme Court and filing the record thereof with the clerk of the Supreme Court together with the printed statement as to jurisdiction required by paragraph 2 of said Rule 13. Such time presently expires June 1, 1964.

2. In support of said motion the undersigned state that the attorneys handling appellate matters for the United States in the Supreme Court are presently engaged in work on the appeal herein. Because of a very heavy calendar of cases pending in the Supreme Court, they have only within recent days had the opportunity to begin study of the matters involved in the appeal. They feel that the time remaining until June 1, 1964, is not sufficient for the study and preparation necessary to completion of the jurisdictional statement and that the enlargement thereof requested herein will be necessary.

[fol. 45] 3. Counsel for the defendants have stated to the undersigned that they have no objection to the enlargement of time sought by this action.

Respectfully submitted,

/s/ John H. Dougherty
Attorney, Department of Justice

/s/ Jonathan Rose
Attorney, Department of Justice

/s/ Stephen Moulton
Assistant United States Attorney

[fol. 46]

CERTIFICATE OF SERVICE
[omitted in printing]

[fol. 47]

IN UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

[Title Omitted]

ORDER OF ENLARGEMENT OF TIME FOR DOCKETING CASE
AND FILING RECORD AND STATEMENT AS TO
JURISDICTION—dated May 28, 1964

On motion of the United States, the defendants consenting, it is ORDERED that the time for docketing said case and filing the record thereof with the Clerk of the Supreme Court of the United States, together with the printed statement as to jurisdiction required by paragraph 2 of Rule 13 of the Rules of the Supreme Court, be enlarged to and including July 1, 1964.

GEORGE C. SWEENEY
United States District Judge
5-28-64

Date:

[fol. 48]

SUPREME COURT OF THE UNITED STATES
No. 232, October Term, 1964

UNITED STATES, APPELLANT

vs.

BOSTON AND MAINE RAILROAD, ET AL.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1964

APPEAL from the United States District Court for the District of Massachusetts.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.